

**NPTEL**  
**NPTEL ONLINE CERTIFICATION COURSE**

**Course**  
**On**

**Gender Justice and Workplace Security**

**by**

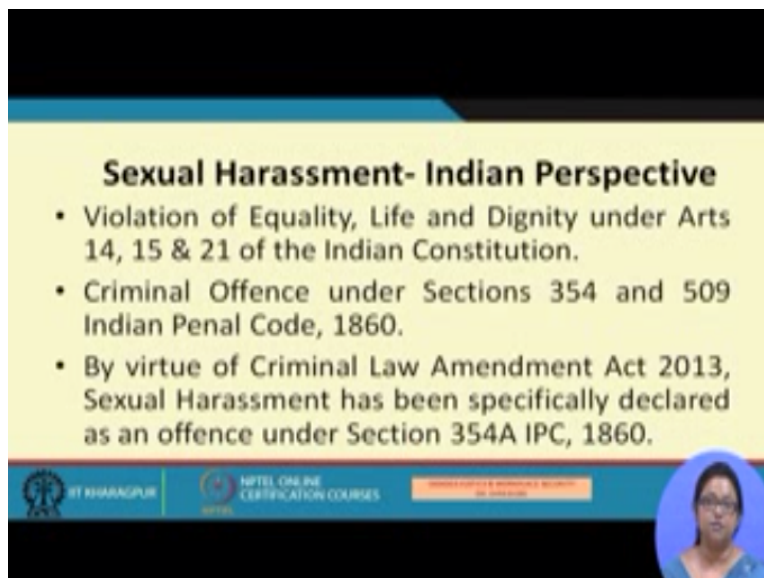
**Prof. Dipa Dube**

**Rajib Gandhi School of Intellectual Property Law**  
**IIT Kharagpur**

**Lecture 11: Women at Workplace (Contd.)**

Welcome all to the course on gender justice and workplace security. In the last lecture we started our discussion on women being a part of the workforce and how these women are subjected to different types of biased and discriminatory practices within the workplace. We have seen that there are different types of laws which have been enacted to ensure the protection of women.

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**Sexual Harassment- Indian Perspective**

- Violation of Equality, Life and Dignity under Arts 14, 15 & 21 of the Indian Constitution.
- Criminal Offence under Sections 354 and 509 Indian Penal Code, 1860.
- By virtue of Criminal Law Amendment Act 2013, Sexual Harassment has been specifically declared as an offence under Section 354A IPC, 1860.

The slide features the IIT Kharagpur logo on the left, the NPTEL Online Certification Courses logo in the center, and a small circular portrait of Prof. Dipa Dube on the right.

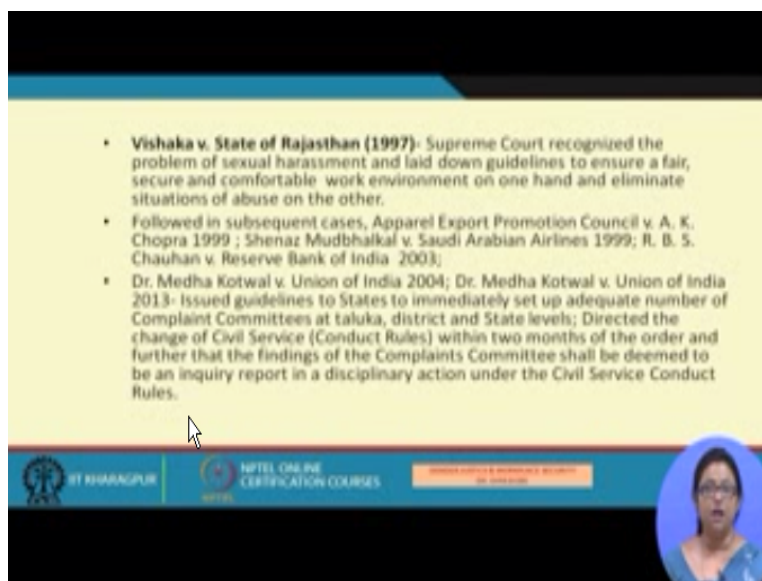
And one specific behavior or aspect which has non-attention in recent times is with regard to sexual harassment. So while we try to understand sexual harassment and the types of sexual

harassment, in India sexual harassment is also an act which is prohibited. It is against the constitutional norms which are laid down as well as these are punishable and criminal acts as laid down in the Indian penal code.

So when we speak of the concept of sexual harassment or the act of sexual harassment it definitely constitutes a violation of the right to equality, life with dignity under article 14, 15 and 21 of the Indian constitution. Such sexual harassment can also constitute criminal offenses under sections 354 and section 5 or 9 of the Indian penal code 1860 which speaks off outrage in the modesty of a women and obscenity.

And by virtue of the latest criminal law amendment act 2013 sexual harassment the term of the offense of sexual harassment has specifically being laid down in section 354A Indian penal code 1860. So therefore, sexual harassment is an act which stands in violation of the constitutional guarantees which are there specifically with regard to women and it constitutes criminal offenses under the law of the land.

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- **Vishaka v. State of Rajasthan (1997)**: Supreme Court recognized the problem of sexual harassment and laid down guidelines to ensure a fair, secure and comfortable work environment on one hand and eliminate situations of abuse on the other.
- Followed in subsequent cases, Apparel Export Promotion Council v. A. K. Chopra 1999 ; Shenaz Muddbhalkal v. Saudi Arabian Airlines 1999; R. B. S. Chauhan v. Reserve Bank of India 2003;
- Dr. Medha Kotwal v. Union of India 2004; Dr. Medha Kotwal v. Union of India 2013- Issued guidelines to States to immediately set up adequate number of Complaint Committees at taluka, district and State levels; Directed the change of Civil Service (Conduct Rules) within two months of the order and further that the findings of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under the Civil Service Conduct Rules.

However, the issue of sexual harassment which we are speaking of now first meant its way into the legal domain expressly within the contours of the concept of sexual harassment by way of the Vishaka judgment or the Vishaka case of 1997. Why is say first made its way is many of these sections which we refer to previously of section 354, 509 of the Indian penal code have being in existence previously as well.

But they were in a different name and in a different color which are capable of taking within it the notion of sexual harassment. However, the term specifically and in its reference to workplace in the Indian context came up in the Vishaka versus state of Rajasthan case. And in this case what happened was the NGO which approach the Supreme Court, the apex court and drew the attention of the code to the dangers and concerns of women who are working that they can be specifically made to suffer.

Because they are working or in a particular job and therefore they become very vulnerable in certain situations and the country lacks any particular type of law which protects the women within the work place and that is where thus supreme court recognized the problem of sexual harassment and it held that sexual harassment at work place is definitely a violation of women's right to life right to equal treatment.

And it is therefore volatile of article 14, 15 article 21 of the Indian constitution doing so the epics court laid down detailed guide lines to ensure or secure and comfortable work environment and on the one hand and eliminate situations of abuse on the other now it laid down guide lines whereby it prescribe certain duties on the employers of organizations to have a mechanism in place where by any instances of sexual harassment with the organization can be reported and effective actions taken within the organization itself to ensure that such practices are eliminated as well as to take appropriate penile action against the offenders who are there.

Now this was for the first time where the court laid down a guide line prohibiting a certain act and requiring employers to abide by certain conditions so as to establish a mechanism to take care of complains of harassment which are level against women within the work place now declare of such directions of the supreme court became the law of the land and that became the first governing law in the country where by all organizations where required to establish a certain institutions certain institution within the communities within the organization and ensure that effective steps are taken to restrict harassment at the work place.

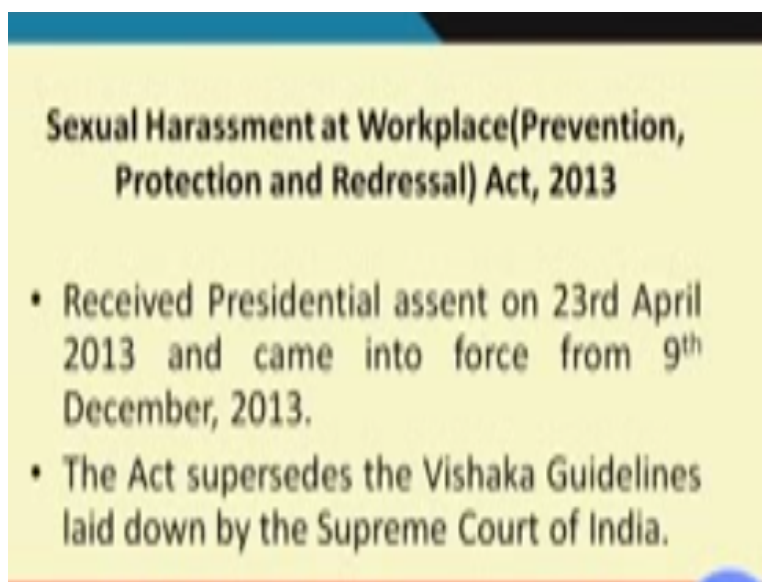
Now so that was an obligation by virtue of the epics could decision which laid to numerous institutions and organizations in the country setting up everyone rid racial cells and giving out appropriate remedies to the complainant appropriate penile actions and there were several cases

thereafter specially apparel export promotion council verse A.K. Chopra, Shenaz v Saudi Arabian airlines etc..

Which have come over the years old dealing with issues of sexual harassment and the court serially laid down various guidelines and parameters with regard to the protection of women at the work place doctor Medha Kotwal v union of India there was a 2004 decision as well as a 2013 decision which issued guideline to the stage to immediately set up adequate number of complain committees at taluka district and state levels and it directed the change of civil service conduct rules for ensuring that complain committee shall be deemed to be enquiry disciplinary committees and they can take adequate disciplinary action under the said rules.

So therefore since we Vishaka various organization were mandated and various instances of such violations or challenging the action taken of such committees came up before the courts where we courts try to uphold the rights of the women protect the issues and concerns of the women however there was also the criticism that many organizations did not adhere to the 1997 guideline and did not establish the necessary grievance mechanism which was directed by the court

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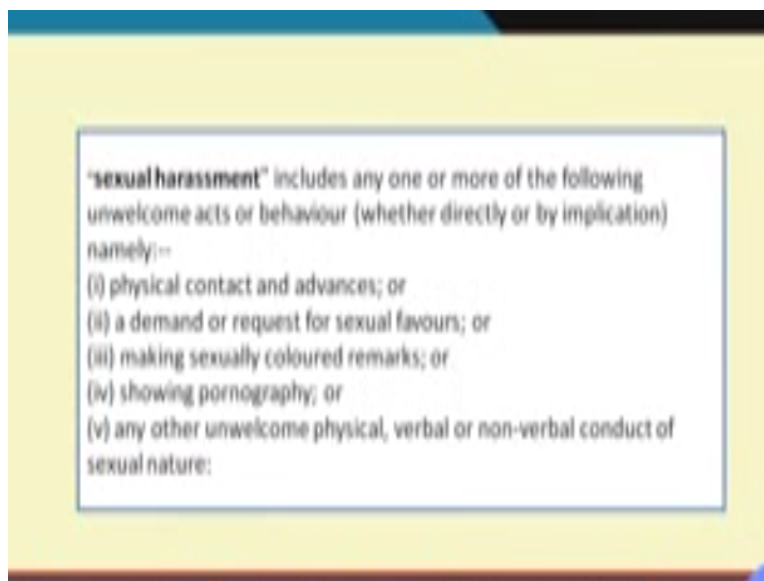
**Sexual Harassment at Workplace (Prevention, Protection and Redressal) Act, 2013**

- Received Presidential assent on 23rd April 2013 and came into force from 9<sup>th</sup> December, 2013.
- The Act supersedes the Vishaka Guidelines laid down by the Supreme Court of India.

Now it was only in 2013 that the first law of the country till then it was the Vishaka Guidelines and that is why I do not go into details with the guidelines but we will try to discuss the provisions of the law, the law which is enforced presently in the country that is the sexual harassment at work place prevention, protection and redressal act of 2013, now the act therefore supersedes the Vishaka guidelines which had been laid down by this supreme court.

Now this act receive the precedential assent on 23<sup>rd</sup> April 2013 and has come into force from 9<sup>th</sup> December 2013 onwards.

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Now before we move to the sexual harassment at work place meaning the preamble to the act lays down that this is an act to provide protection against sexual harassment of women at workplace the other object is the prevention as well as redressal complaints of the sexual harassment it says that sexual harassment results in violation of the fundamental rights of women to equality under article 14 and 15.

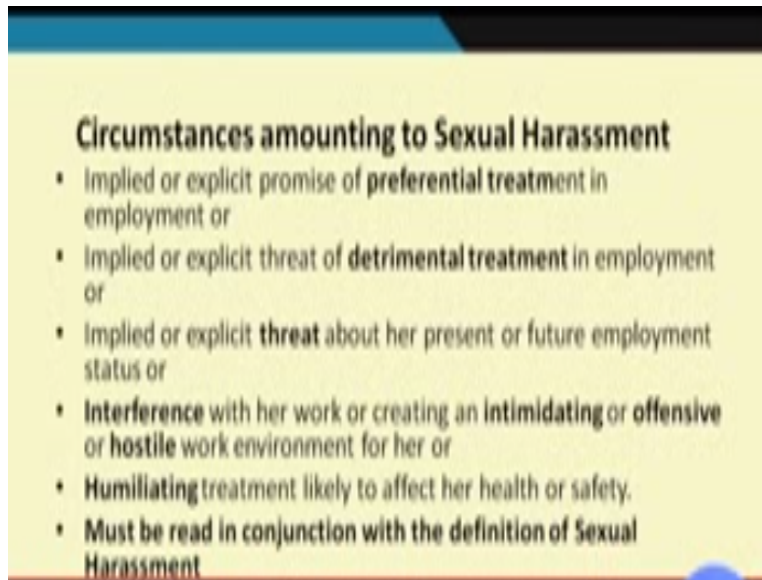
And her right to live to dignity under article 21 and her right to practice any profession or carry on any occupation under article 19 and such write includes the right to a safe environment free from sexual harassment and because protection against sexual harassment and the right to work against dignity with human dignity are universally recognized human rights, by international conventions and instruments one which we have referred before the CDO of 1977 and therefore the state enacts these act to take care of the issues of prevention, protection and redressal of sexual harassment at work place.

Now the act goes onto define the term sexual harassment in section 2N of the act and it says that sexual harassment includes anyone or more of the following unwelcome acts or behavior whether directly or implication there are a certain closes there after which elaborates that so one is the act is unwelcome and it is of the nature of this 1), physical contact and advances, 2) a demand or request for sexual favors, 3) making sexually colored remarks, 4) showing pornography and the 5<sup>th</sup> is a broad one, any other unwelcome physical verbal or non-verbal conduct of sexual nature so sexual harassment does not really required a physical act on the part of a personas physically touching or physically groping a person it can be any other form of behavior it may be verbal or even it may be non-verbal in nature but there is a sexual content in the expression in the attitude in the behavior in the word spoken of the harasser.

And this sexual content is something which is unwelcome to the women, so if it is a case of a physical contact then it is something a contact or an advance which the women it is unwelcome to the women and it is injurious to the women or it may be a demand for sexual favors if you do this then you will be promoted then you will get an educational advancement or even making remarks with someone has a implicit sexual content.

Even showing pornography all comes within the definition of the term sexual harassment as laid down in the act of 2013.

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Additionally section 3 for the lays down that in addition to the definition if there are any of this circumstances which are there in like promise of preferential treatment, threat of detrimental treatment, threat about present or future employment interference with her work and intimidating or offensive or hostile work environment are humiliating treatment in all such cases these would also qualify the terms sexual harassment.

However we must understand that these circumstances must be read in conjunction with the definition of sexual harassment, so if it is a physical contact or an advance with promise of preferential treatment, detrimental treatment, thread extra then it can be read as our aspect of or act of sexual harassment.

But mere humiliating treatment which does not have any link with you know words spoken or behavior shown which has a sexual contempt extra then it may not qualify for a definition of sexual harassment.

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**SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE**

- In 2010, the High Court of Delhi endorsed the view that sexual harassment is a **subjective experience** and for that reason held "...analyze harassment from the [complainant's] perspective. A complete understanding of the [complainant's] view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. ... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive." [Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009 on 9 September, 2010]

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Now for that purpose what amongst to or what does not amongst to it is a very subjective matter it has to be seen in light of individual facts and circumstances as to the behavior met it out as to the words spoken or the gussets made in a subjective way it has to be understood that whether it comprises an act of sexual harassment or not. Now and there it is important to consider the compliances perspective the women's perspective and that is what we said previously the impact on the women is more important than what is the intention of the man.

Sometimes there are many types of manly behavior which may be there and they may view or not view certain behavior as being bad or as being sexual that is immaterial. Whether with regard to the woman concern whether that act is objectionable that act is harmful that is what is important to consider whether it would come within the term sexual harassment.


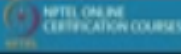


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## "workplace"

- (i) any department, organisation, undertaking, establishment, enterprise, institution, etc. of Govt.
- (ii) any private sector organisation or a private venture,
- (iii) hospitals or nursing homes;
- (iv) any sports institute, stadium, sports complex or games venue;
- (v) any place visited by the employee arising out of or during the course of employment;
- (vi) a dwelling place or a house;

All offices, institutions in private or public sector, including educational institutions are workplaces.

Now here when we are speaking of sexual harassment it basically the protection is given to women as regards the work place. Now the work place has been defined in section 2O of the act and it goes on to include all offices, institutions in public or private sector including educational institutions and when we say all offices, institutions are private.

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The diagram illustrates various types of workplaces, each enclosed in a circle. The categories are: Govt. Offices, Companies, Hospitals & Nursing Homes, Houses, NGOs, Agriculture Farms, Sports Facilities, Cooperative Societies, Sports Facilities, and Service Providers.



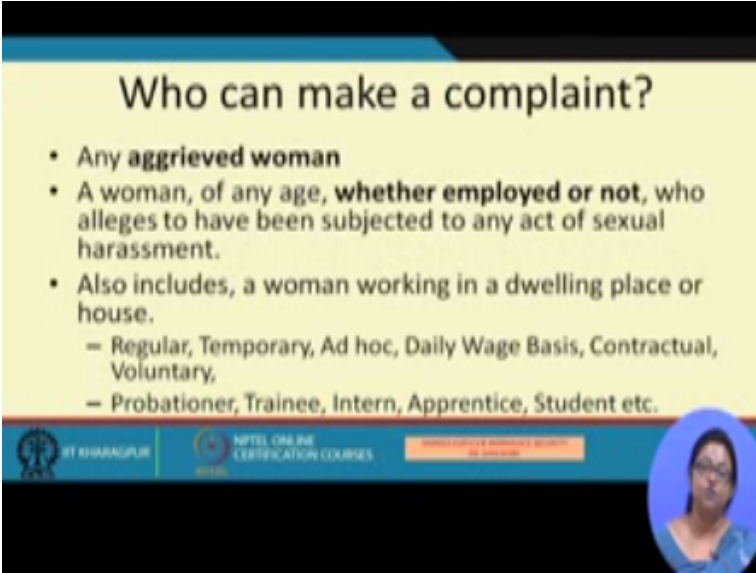



So this is somewhere explanatory government offices, companies, NGOs, sport facilities, agricultural farms, hospitals extra cooperative societies, houses now what is important is it is not

only the organized sector but also the unorganized sector which has been taken care of by the act, so it is not only the organized sector in terms of public institutions extra which where women are working who would get the protection.

But even in the unorganized sector specifically speaking of may be houses or may be constructions sites extra.

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The slide is titled "Who can make a complaint?" and lists the following criteria:

- Any **aggrieved woman**
- A woman, of any age, **whether employed or not**, who alleges to have been subjected to any act of sexual harassment.
- Also includes, a woman working in a dwelling place or house.
  - Regular, Temporary, Ad hoc, Daily Wage Basis, Contractual, Voluntary,
  - Probationer, Trainee, Intern, Apprentice, Student etc.

The slide also features logos for IIT Kharagpur and NPTEL Online Certification Courses, and a small circular portrait of a woman in the bottom right corner.

The women working their entitled to protection under the law, and therefore who can make a complaint with regard to sexual harassment, now what we understand here that this is a genders specific legislations it aims to give protection to women at the work place. So it is as many times questions are asked that is it gender neutral or is it gender specific this legislation makes it very clear that it is the prevention protection and regressive of complaints which regard to women. So the one who is protected is the women or one who can make a complaint is the women does it mean that there are not situations of sexual harassment against man that is look where been contented there have been instances.

However the numbers are quite low there have been instances of harassment or abuse within the workplace or man by may be or female boss or any other man, however there may be many other general laws which may be invoked in such situation but the 2013 act it specifically for the protection of women because in generally seen in numbers, the numbers affecting women are much large than it concerns the other sex for that matter.

So therefore who can make a complain the act used to term aggrieved women now who can be such women the women may be of any age whether employed or not who elegies to have been subjected to any such act of sexual harassment. So one who believes that she has been subjected to sexual harassment such women who to be turn as a aggrieved women and such aggrieved women can bring a cause of toxin, and it includes all categories of people or women regular workers temporary workers ad hoc workers daily wage earners contractual workers even it is inclusive of probationers, trainees, in terns, apprentice and student.

And that is the significant of the work employed or not they are not in work place but they cannot legally speaking may be sect to be employed for that matter, but even the protection extends to such a person.

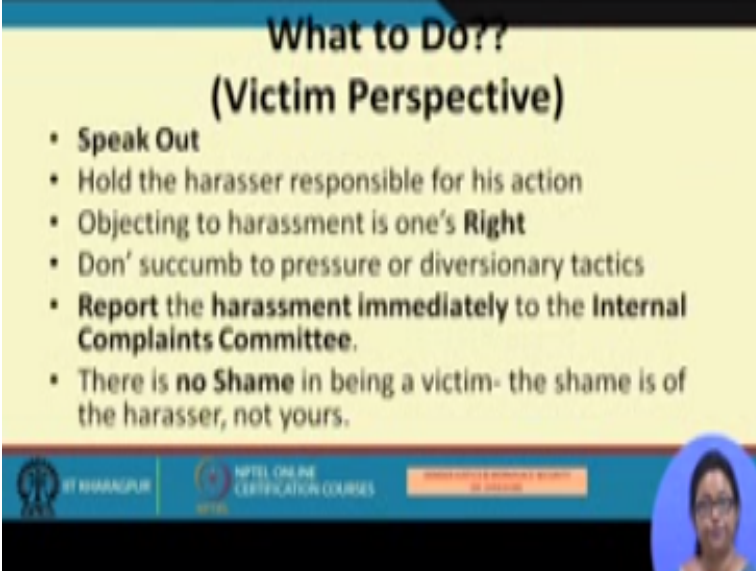
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And it would be further important to note that has we said that it covers also the unorganized sector even domestic workers are covered within the controls of the definition. So those workers

whom we see as working within the homes they can also seek necessary protection under this act.

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**What to Do??**  
**(Victim Perspective)**

- **Speak Out**
- Hold the harasser responsible for his action
- Objecting to harassment is one's **Right**
- Don't succumb to pressure or diversionary tactics
- **Report the harassment immediately to the Internal Complaints Committee.**
- There is **no Shame** in being a victim- the shame is of the harasser, not yours.

The slide features a blue header and footer. The footer contains the logos of IIT Roorkee and NPTEL Online Certification Courses, along with a small inset image of a woman in the bottom right corner.

Now instead of going to the different section one by one what is very important to understand is how to make use of this act and what is to be done for implementing the act. So we will see two perspectives one is the victims perspective and one is from the perspective of the complaints committee which has been lay it down. Now victim perspective this act tends to protect the rights of women and when we refer to the victims we are basically referring to the course of this women.

Now what happens is even though the women may be grown up may be educated enough many times in the back drop of such harassment or humiliation treatment one they feel shy they feel you know very difficult to really speak up and reveal to others what is taken place top protest again such humiliation etc. So what is very, very important in order to implement the act is to speak out, as soon as an act of harassment takes place which you perceive to be or which victim believes is a case may be a case you need not be sure but you think that would be a case of sexual harassment it is important that he victim image immediately speaks out.

The victim must hold the harasser responsible for his action and that the victim can do by approaching the appropriate body for appropriate remedies. Now one must understand that one has a right to be there has right to work and continue with the work and he the person also has right to preclude anybody who intends to interfere with that rights. So once that is there then the person must understand that if somebody is trying to interfere with the act by way of one or the other humiliating or demining treatment.

If it is from a employer if it is from other employees then the person must immediately object to that, so report the harassment immediately to the internal complaint committee. What is very, very important specifically in a conservative society as in India tradition bounds society that there is no shame in way being a victim, the shame is of the harasser not of the victim so that is very, very important that one has been subjected to sexual harassment has nothing to do with the person with the character of the person or anything and that person has every right to move to the appropriate body to ensure that heard rights or maintain and heard rights are establish before the law. So therefore this law tries to empower the women to ensure that she gets her right.

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**Proceed during Inquiry**

**Defend Your Case**  
Provide Witnesses/ Documents  
Be consistent, Do Not exaggerate/ hesitate

**Ask for Privacy/ Confidentiality**  
Names should be suppressed

**Ask for Protection**  
Leavey/transfer/ Transfer of Harassor  
In case of educational institute, the harassor may be debarred from all activities involving the complainant.

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Now in proceeding with the case what is very important is first she must initiate necessary action now this action has to be initiated within three months of the complete so that is what is the important of the facts that immediate reporting as soon as there is an instance of harassment

initially there should be reporting of the matter and the act is out that it should be within 3 months of the act of harassment that reporting must be made.

However the committee is under liberty to all reasonable grounds and reasonable reasons to excuse any sort of a delay which might have taken place in the reporting of the matter to the internal committee the victim must be complained in righting in the righting it is very important to clearly enumerate what are the actions which she found object able because of which she won to institute the case of sexual harassment.

It may be as decay as possible irrelevant details may be ruled out but those which are relevant must be late down and enumerating clearly many times women out of change out of some or other feelings tries to hide certain facts not reveals certain facts which can be detrimental for the case itself.

Therefore imitative and enquiry as soon as possible is one of the important aspect which is require the next thing which is important is she can ask for interring measures in this interring measures she can ask for certain her leave that she may be allow to be leave because she doesn't work one to continue during the continuous of an enquiry in that atmosphere.

She may asked for necessary actions to be taken against the harassment were by the direct influence or control of the harasser on the substantially reading so including measures she can assist one she must ensure that effective she must cooperate during the continuous of the enquiry and she must seek appropriate remedy to ensure that effective action or appropriate action is taken against the violated or the harasser.

Now in the case what is very important is defend your case now this is the situation where every person whoever is bringing an allegation must be the person who is able to establish the facts now such establishment of facts in to what we called as law as evidence so one is defend in the case and defend the case the person must ensure that whole necessary witnesses and documents are produced or submitted to the complaints committee which has been established or to whom the complaint has been made.

It is the responsibility of the complaints to see that all those persons who have information about it or the names are given they are called whole such documents which might gone to revels such

sexual harassment in righting I brought before the committee because remember you have to defend your case you need to be consistent any sort of exertion any sort of hesitation etc.

We will only weekend your point so it is very, very important for the complaints and the women to stand for the rights and to establishing in a very structural and clear manner ask for privacy and confidential that is one of the basic rights it is very, very important that the names are other details of the women are vital or suppressed because many times she may be subjected to further harassment or further humiliation on the ground of her making accomplishment.

She may be subjected to further jokes of the other colleagues in an organization and therefore you must be insist on privacy and confidentiality ask for necessary protection so that is the internally measures we are talking of that leave transfer of the harasser in case of educational institute what has been purely laid out is the harasser may be reward for the whole activities involving the compliances.

So sometimes it may be situation that harasser is the supervisor or the harasser is the member of such committee which may take some actions or academics actions against the person during the continuous she has to be given complete protection and it takes the responsibility of the committee as well as of the employer that she is not to any difficult situation.

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**Seek Remedies**

<p><b>Adequate action taken by ICC-</b></p> <ul style="list-style-type: none"> <li>• Written Apology,</li> <li>• Censure,</li> <li>• Loss of Pay,</li> <li>• Loss of Increments,</li> <li>• Black mark in Service Records,</li> <li>• Counselling session,</li> <li>• Dismissal from Service</li> </ul>	<p><b>Compensation to the Woman-</b></p> <ul style="list-style-type: none"> <li>• Mental trauma,</li> <li>• Emotional Distress,</li> <li>• Loss of Career Opportunity,</li> <li>• Medical or Other expenses</li> </ul>
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And which is very, very important is to seek remedies you must be able to seek appropriate remedies doesn't mean that you can insist on the particular remedy to be given but your actions resulted action is effective remedy against so it should secured your protection as well as it should ensure defective action against has been taken against the other part.

Now that is unto the committee what type of remedy it can be give it can range from minor to major remedies but what is important is the laws specifically speaks of women so she can assist of compensation of in terms of such as mental chromo emotional distress and laws of medical and other expenses with she has gone through so therefore this is how the victim.

As to approach the internal compliances committee in case she suspects the case of sexual harassment report the matter report at the earliest and initiate actions against the harasser support the case with necessary documents at other evidences which may be near ask for the privacy ask for interring measures and get necessary relief and remedies in the process including that of compensation.